

§ 1962.43 [Reserved]

§ 1962.44 Distribution of liquidation sale proceeds.

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form FmHA or its successor agency under Public Law 103-354 455-4, Form FmHA or its successor agency under Public Law 103-354 455-3, or Form FmHA or its successor agency under Public Law 103-354 462-2.

(a) [Reserved]

(b) *Order of payment.* Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by the Agency and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of the Agency state that such bills may be paid from the sales proceeds ahead of their liens.

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to the Agency.

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to the Agency for sale, such costs incurred by the Agency after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which are prior to the Agency liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of the Agency will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substan-

tial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in subparagraph (b)(2)(i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible, disinterested party an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If the Agency subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the Agency lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lien-holders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to the Agency other than the landlord's lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed the Agency which are secured by liens on the property sold.

(5) To pay liens junior to those of the Agency in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in paragraph (b) (2), (3), or (5) of this section.

(8) To pay on any other the Agency debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the

remainder of such sale proceeds by the borrower for other purposes, provided the other the Agency debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) [Reserved]

[50 FR 45783, Nov. 1, 1985, as amended at 61 FR 35931, July 9, 1996]

#### § 1962.45 Reporting sales.

Form FmHA or its successor agency under Public Law 103-354 1955-3, "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by FmHA or its successor agency under Public Law 103-354.

#### § 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to the Agency, the County Supervisor will prepare Form FmHA 455-17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Subpart B of Part 1956 of this chapter. If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting.* The borrower's case files including Form 455-17 will be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist (When it is necessary to send an incomplete Form FmHA 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455-17 or in a memorandum.):

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to the Agency are inadequately secured and the state has other assets from which collection could be made.

(3) The Agency's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to the Agency which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

(5) The County Supervisor recommends, but does not have authority to approve liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings.* Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, the Agency will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at the Agency's request, and any security is to be liquidated by the Agency instead of by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:

(1) Such proceedings will not be started by other parties;

(2) The Agency's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by the Agency official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of the Agency by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If a direct